

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

POPLAR SCHOOL DISTRICT,)	
)	
Appellant,)	OSPI 338-14
)	
vs.)	DECISION AND ORDER
)	
ROOSEVELT COUNTY)	
TRANSPORTATION COMMITTEE and)	
FROID PUBLIC SCHOOLS,)	
)	
Respondents.)	

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

PROCEDURAL HISTORY

On September 4, 2014 the Roosevelt County Transportation Committee (CTC) approved a Froid School District (Froid) bus route that was amended to extend the route into the Poplar School District (Poplar) transportation service area. Poplar filed an appeal with the Superintendent of Public Instruction of that decision on September 30, 2014.

The parties have filed briefs and this matter is now at issue.

STATEMENT OF FACTS

1. Two families who live in the Poplar district and have sent their children to the Froid schools for several years. The Froid bus has picked up the children at the road which is in the Froid transportation service area.

2. In the summer of 2014 the Froid superintendent requested permission from the Poplar School District (Poplar) to enter the Poplar transportation service area to pick up and transport the children to Froid.

3. On August 11, 2014 the Poplar board of trustees denied Froid's request and declined to enter into an agreement as required by 20-10-126, MCA. The Poplar district clerk advised Froid of that decision by letter dated August 12, 2014.

4. On August 14, 2014 the Froid superintendent acknowledged receipt of the denial and stated that they would pick up the children at the road.

5. On September 4, 2014, the Roosevelt County Transportation Committee (CTC) met to review and approve bus routes for the coming year.

6. Froid submitted their bus routes and requested that one route be extended into the Poplar transportation service area to pick up the children at issue so that the bus could turn around in their driveways rather than stop at the bottom of the hill.

7. Poplar objected to extending the bus route into their transportation service area. The superintendent stated that the district often entered into an agreement to allow a bus into their transportation service area when the children lived closer to the school of choice than they did to the Poplar schools.

8. The children in this matter live closer to Poplar than they do to Froid and therefore Poplar declined to enter into an agreement for Froid to come into the Poplar transportation service area.

9. Following a discussion, the CTC approved all of the bus routes including the Froid route that was extended into the Poplar transportation service area.

10. At the CTC meeting, Poplar was advised by the Roosevelt County Attorney that if they did not agree with the amendment to the route they could appeal the CTC decision to the Superintendent of Public Instruction.

ISSUE ON APPEAL

Whether the Superintendent of Public Instruction has jurisdiction over this matter.

STANDARD OF REVIEW AND AUTHORITY

Pursuant to ARM 10.6.101(1)(a), all references related to procedure for a matter of school controversy detailed in ARM Title 10, Chapter 6, governing an appeal to the county superintendent also apply to the county transportation committee. As such, the Superintendent of Public Instruction's review of a county transportation committee's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, Montana Code Annotated (MCA) and adopted by the Superintendent of Public Instruction in Administrative Rules of Montana (ARM) 10.6.125.

The Superintendent of Public Instruction may reverse or modify the county transportation committee's decision if substantial rights of a party have been prejudiced because the conclusions of law and order are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. M. 10.6.125(4).

DISCUSSION

Issue: Whether the Superintendent of Public Instruction has jurisdiction to hear this matter.

On August 11, 2014, Poplar's school board formally denied Froid's request to extend a bus route into Poplar's transportation service area. On September 4, 2014, the CTC approved the bus route extension into Poplar's transportation service area without there being any agreement between the districts, and without having received an appeal of the decision of Poplar's board of trustees. The CTC did not hold a fact-finding hearing as provided for in § 20-10-132, MCA.

ARM 10.6.121 (4) provides: "A party who is aggrieved **by a final decision in a contested case before the county superintendent [county transportation committee]** is entitled to appellate review by administrative appeal to the State Superintendent." "Contested case means any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing." ARM 10.5.102

In this situation, there was no contested case decided by CTC and therefore, the committee's decision is not appealable to the Superintendent of Public Instruction.

Although this case must be dismissed for lack of jurisdiction, it is noted that before approving bus routes for reimbursement for transportation costs, the Superintendent of Public Instruction not only requires approval of the routes by the CTC, but also requires a written agreement as required by § 20-10-126(2)(a), MCA, for any routes extending into another district's transportation service area. Further, § 20-10-104(3), MCA, directs the County Superintendent to withhold all reimbursements when a district is in violation of student transportation laws.

DECISION AND ORDER

The Superintendent does not have jurisdiction to hear this matter and the appeal is dismissed.

DATED 9th day of January, 2015.

/s/ Denise Juneau
Denise Juneau,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 9th day of January, 2015 I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

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/s/ Beverly J. Marlow